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ABSTRACT

This brief paper summarizes requirements of the Americans with Disabilities Act (ADA) of 1990 related to reasonable accommodation. The following topics are addressed: what is meant by reasonable accommodation and some examples; some ways of determining essential job functions and possible accommodations (such as job descriptions, permissible and impermissible questions, use of medical information, and use of tests); reasonable accommodation and safety considerations; and reasonable accommodation and worker misconduct (especially when the misconduct is related to the individual's disability). A listing of three resources is provided. (DB)

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# Reasonable Accommodation Under the Americans with Disabilities Act

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*This publication is taken from a more extensive review of the topic entitled "Reasonable Accommodation Under the Americans with Disabilities Act" which is currently available for purchase from your Regional Disability and Business Technical Assistance Center at 1-800-949-4232, or from LRP Publications (specify Product #31015.ACCOM, 47 pp. $16), PO Box 980, Horsham, PA 19044-0980, phone 1-800-341-7874, Fax 1-215-784-9639.*

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**What is Reasonable Accommodation?**

The Americans with Disabilities Act (ADA) requires employers to make reasonable accommodation for a qualified individual with a known physical or mental disability. Potential reasonable accommodations include job restructuring, reassignment to a vacant position, part-time or modified work schedules, assistive technology, or aides or qualified interpreters.

Although the ADA does not require employers to make accommodations that pose an "undue hardship" (defined as significantly difficult or expensive), the experiences of employers around the nation demonstrates that many accommodations cost nothing, and few pose the "significant expense" that many employers fear. Studies conducted in 1986 and in 1992 showed that more than half of the accommodations made for employees with disabilities cost nothing, while another fifteen percent cost under $500. Tax credits are available to businesses who remove architectural barriers, target jobs for individuals with disabilities, or provide assistive technology or interpreters to workers with disabilities.

Employers are required to make reasonable accommodation for qualified individuals with a disability, who are defined by the ADA as individuals with a disability who satisfy the job-related requirements of a position held or desired, and who can perform the "essential functions" of such position, with or without reasonable accommodation. The employer identifies the job's essential functions; job descriptions prepared before an individual is interviewed or selected for a position are considered evidence of a job's essential functions. If the individual cannot perform an essential function, even with accommodation, the individual is not considered "a qualified individual with a disability" under the law.

The employer should confer with the employee with regard to the type of accommodation that will enable the employee to perform the essential functions of the position. The requirements of the particular position and the employee's physical or mental limitations should be evaluated in order to determine the accommodation that will be effective.

If a reasonable accommodation poses an undue hardship, it need not be implemented. Undue hardship is evaluated by assessing various factors, including the nature and net cost of the accommodation, the overall financial resources of the facility and of the business, and the impact of the accommodation on the operation of the facility. Accommodations of a personal nature (such as a guide dog for a visually-impaired employee, or a wheelchair) would not be the employer's responsibility.

The employer need not create a new job for the person with the disability, nor must the employer reallocate essential functions to another worker. An employer may be required to restructure a job by reallocating nonessential, marginal job functions. For example, the



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Postal Service refused to promote a hearing-impaired secretary because she could not answer the telephone. The court ordered the Postal Service to promote the individual, noting that several other secretaries were available to answer the telephone, and that simply because telephone answering was considered a low status assignment did not make it an essential function of the secretary's job.

Employers who fear that accommodating a worker with a disability will lower the morale of co-workers will not find this a helpful defense to an ADA charge. Nor will the concern that co-workers or customers will not wish to associate with an individual with a disability be an appropriate reason to deny such an individual employment.

**Accommodating a Worker with a Disability**

The accommodation process begins before the disabled worker is hired (or identified, if it is a current employee who becomes disabled after being hired). Written job descriptions prepared before advertising or interviewing applicants are evidence of whether particular job functions are essential, but other evidence, such as what previous or current holders of the job actually do, is also relevant. Job descriptions should be reviewed to ensure that they include the essential functions of each job, particularly with regard to physical requirements. Statements such as "all incumbents must perform all functions of the position," or "there is no light duty in this department" are not determinative of whether a reasonable accommodation must be provided.

Recruiters or interviewers must be trained with regard to inquiries which are permissible under the ADA. Under the ADA, an employer may not ask about the existence, nature, or severity of a disability and may not conduct medical examinations until after it makes a conditional job offer to the applicant. This prohibition ensures that the applicant's hidden disability is not considered prior to the assessment of the applicant's non-medical qualifications. At this pre-offer stage, employers may ask about an applicant's ability to perform specific job-related functions. An employer also may ask other questions that are not disability-related and may require examinations that are not medical.

After making a job offer, an employer may require a medical examination or make disability-related inquiries if all entering employees are subject to the exam or inquiry. If an examination or inquiry screens out an individual because of disability, the exclusionary criterion must be job-related and consistent with business necessity. The employer also must show that the criterion cannot be satisfied and the essential functions cannot be performed with reasonable accommodation. Employers are also permitted to conduct medical examination and make disability-related inquiries of employees if such exams or inquiries are job-related and consistent with business necessity.

Any medical information obtained must be kept confidential by the employer. This means that the employer must collect and maintain the information on separate forms and in separate medical files. The employer may disclose the information only to persons and entities specified in the ADA.

Employers may use any kind of test to determine job qualifications. However, qualification standards, tests or other selection criteria that screen out an individual with a disability or a class of individuals with disabilities will violate the ADA unless shown to be job-related and consistent with business necessity. Even if this showing can be made, an employer must consider whether the criteria can be met, or job performance accomplished with the provision of reasonable accommodation. In addition, tests must be administered to an applicant or employee with a disability in a way that ensures that the test results accurately reflect the skills, aptitude, or whatever other factor is being tested, rather than reflecting the impaired sensory, manual or speaking skills of the person, unless these skills are what is being tested.

**Reasonable Accommodation and Safety**

Some employers are concerned that a worker with a disability could be a safety hazard, either to herself or to co-workers or customers. The law takes this concern into account, but only if it is founded upon clear, documented evidence that the individual is a "direct threat" to herself or others because of the nature of the job and the specific characteristics of that individual's disability.

In determining whether an individual with a disability poses a direct threat, including an individual with a contagious disease, the factors to be con-

sidered include:

(1) the duration of the risk;
(2) the nature and severity of the potential harm;
(3) the likelihood that the potential harm will occur; and
(4) the imminence of the potential harm.

Part of the reasonable accommodation determination is an analysis of whether the individual can be accommodated in a way that eliminates the direct threat or reduces it to an acceptable level. For example, an employer would not be required to hire an individual who is blind to drive a bus, but several courts have said that disabilities such as diabetes do not automatically preclude an individual from holding a bus driver's job. The key here is to obtain individualized medical information about the limitations that are posed by this worker's disability and the probable harm that this individual's specific physical or psychological problems will pose for the position in question.

**Reasonable Accommodation and Worker Misconduct**

The ADA protects individuals with mental as well as physical disabilities, and the reasonable accommodation requirement applies in the same way for both kinds of disabilities. However, employers may hold individuals with disabilities to the same performance and conduct standards as other workers; if the worker engages in misconduct that warrants discipline under the employer's policy, even if the conduct is related to the individual's disability, the employer may discipline the worker.

If an employee requests accommodation prior to engaging in misconduct, e.g., leave to attend therapy sessions, the accommodation must be provided unless it would impose an undue hardship. On the other hand, if the employee engages in misconduct prior to requesting the accommodation, the employer may impose the appropriate discipline. This may include discharge, depending on the employer's discipline policy and the nature of the misconduct involved. If the employer has a policy of progressive discipline, the employer may impose discipline short of discharge and then provide an accommodation that would enable the employee to meet the conduct standards.

Off-duty misconduct may also be grounds for discharge or discipline, even if the worker asserts that the disability "caused" the misconduct. In most cases that have reached the courts, the misconduct was related to alcohol or drug abuse, and the employer was able to demonstrate that being required to retain the individual would be an undue hardship because the job itself required the individual to demonstrate good judgment or to be law-abiding (such as a police officer or an FBI agent).

Employees whose excessive absences or tardiness create problems for the employer are not necessarily protected even if the attendance problems are related to the disability. However, the employer must consider whether a reasonable accommodation (such as a different work schedule, additional paid or unpaid time off, or working at home) is possible and whether such an accommodation would constitute an undue hardship.

Employers should train their staff about the general requirements of the ADA, with particular emphasis on defining the essential functions of each position and the accommodation requirement. Learning to assess the individual first and the disability second, working with the individual and his or her counselor, medical professional, or other knowledgeable persons in fashioning the appropriate accommodation, and responding to requests to review the effectiveness of the accommodation will very likely satisfy the demands of the ADA, the practical needs of the individual with a disability, and the employer's need for a productive and committed workforce.

**Resources**

For information on the Americans with Disabilities Act and accommodations the following can be contacted:

**ADA Regional Disability and Business Technical Assistance Center Hotline,** (800) 949-4232 (voice/TTY).

**Job Accommodation Network,** West Virginia University, PO Box 6080, Morgantown, WV 26506-6080, (800) ADA-WORK (voice/TDD).

**Equal Employment Opportunity Commission,** 1801 L Street, NW, Washington, DC 20507, (800) 669-4000 (Voice) to reach EEOC field offices; for publications call (800) 800-3302 or (800) 669-EEOC (voice/TTY).

For Further Information Contact:

***ILR Program on Employment and Disability***
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**Voice: (607) 255-7727 Fax (607) 255-2763 TTY: (607) 255-2891**

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Cornell University is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, you should be aware that NIDRR is not responsible for enforcement of the ADA. The information, material, and/or technical assistance is intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

In addition to serving as a National Materials Development Project on the Employment Provisions of the Americans with Disabilities Act of 1990, *the Program on Employment and Disability* also serves as the training division of the Northeast Disability and Business Technical Assistance center. This publication is one of a series edited by Susanne M. Bruyere, Ph.D., C.R.C., Director of the ILR Program on Employment and Disability at Cornell University.

OTHER TITLES IN THIS *IMPLEMENTING THE ADA* SERIES ARE:

A Human Resource Perspective on Implementing the ADA
Pre-Employment Screening Considerations and the ADA
Pre-Employment Testing and the ADA
Reasonable Accomodations Under the ADA
Health Benefit Plans and the ADA
The ADA and Injured Workers
The ADA and Collective Bargaining Issues
The ADA and Porsonnel Training
The ADA and Total Quality Management
Cultural Diversity and the ADA

These and other informational brochures can be accessed on the World Wide Web at:
www.ilr.cornell.edu/ped/ada

*For further information about publications such as these, contact the ILR Program on Employment and Disability, Cornell University, 102 ILR Extension Division, Ithaca, NY 14853-3901; or at **607/255-2906** (Voice), **607/255-2891** (TTY), or **607 /255-2763**(Fax).*

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